IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:06.12.2005

CORAM:

THE HON'BLE MR.JUSTICE P.SATHASIVAM

and

THE HON'BLE MR.JUSTICE S.K. KRISHNAN
Writ Petition No.19840 OF 2003

M. Adaikann ..Petitioner

vs.

1. The Registrar of Co.operative Societies,
   N.V.N. Maaligai,
   No.170 E.V.R. Periyar Road
   Kilpauk, Chennai 600 10.

2. The Joint Registrar of Co.operative Societies, Ramakrishna Road,
   Salem 7.

3. The Registrar
   Tamil Nadu Administrative Tribunal
   City Civil Court Buildings
   Chennai. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified mandamus as stated therein.

For petitioner : Mr. L. Chandrakumar

For respondents 1 and 2: Mr. E. Sampathkumar
Government Advocate

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ORDER

(ORDER of the Court was made by P.SATHASIVAM,J.)

Aggrieved by the order of the Tamil Nadu Administrative Tribunal dated 22.05.2003 made in O.A.No.807 of 2002, in and by which the punishment of dismissal from service has been confirmed, the petitioner - Special Officer, has filed the above writ petition to quash the same and direct respondents 1 and 2 to reinstate him with all service and monetary benefits.

2. The case of the petitioner is briefly stated hereunder:

According to the petitioner, he was appointed as a temporary Junior Inspector of Co.operative Societies on 05.02.1985. His service was regularised with effect from 16.10.1989 and subsequently he was promoted as Senior Inspector of Co.operative Societies and while working as such, during 1995, he was directed to hold additional charge of about 15 Societies as Special Officer, which covered around 50-60 Kms., area. Based on the repeated representation of the employees of the Societies, which are under his control, a settlement has been arrived at by him under Section 12 (3) of the Industrial Disputes Act, 1947, and with the approval of the then Co.operative Sub-Registrar, who is a competent and higher authority, revision of pay scales of the employees of the Societies came to be extended. While so, alleging violations, he was issued with a charge memo dated 31.03.1998 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules (in short "the Rules") and the petitioner was asked to submit his explanation for the same. Thereafter, an Enquiry Officer was appointed and at the time of enquiry, on 13.07.2002, the petitioner submitted his written explanation. The petitioner was also served with a copy of the enquiry report and he made a further representation, disputing all the allegations. By order dated 31.01.2002, the second respondent - Joint Registrar of Co.operative Societies, Salem-7, imposed a capital punishment of dismissal from service. Aggrieved by the same, the petitioner filed O.A.No.807 of 2002 before the Tamil Nadu Administrative Tribunal. The Tribunal, by the order impugned in this writ petition, dismissed his original application, confirming the punishment of dismissal passed by the 2nd respondent / Joint Registrar of Co.operative Soceities, Salem. Questioning the same, the petitioner has filed the present writ petition.

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3. Heard Mr. L. Chandrakumar, learned counsel for the petitioner and Mr. E. Sampathkumar, learned Government Advocate for respondents 1 and 2.

4. The learned counsel appearing for the petitioner after taking us through the relevant materials, including the impugned order of the Tribunal, has raised the following contentions.

(i) The respondents have no jurisdiction to initiate proceedings under Rule 17(b) of the Rules, as per G.O.Ms.No.111 Personnel and Administrative Reforms (Fundamental Rules II) Department, dated 02.05.1994;

(ii) The petitioner was not given reasonable opportunity to put forth his case before the Original Authority as well as the Tribunal;

(iii) Inasmuch as the second respondent / Joint Registrar of Co.operative Societies, higher officer than the appointing authority / Deputy Registrar of Co.operative Societies had imposed the punishment, the petitioner has lost an opportunity of canvassing the order before the said appellate authority; and

(iv) Inasmuch as in respect of similarly placed persons, the very same Department has imposed minor punishment and in some cases charges have been dropped, the respondents are not justified in imposing the capital punishment, viz., dismissing the petitioner from service. "

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5. On the other hand, the learned Government Advocate by drawing our attention to the details furnished in the counter affidavit, met all the contentions raised by the learned counsel for the petitioner and prayed for dismissal of the writ petition.

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6. We have perused the relevant materials and considered the rival contentions of both parties.

7. With regard to the first contention, as per G.O.Ms.No.111 Personnel and Administrative Reforms (Fundamental Rules II) Department, dated 02.05.1994, the deputationist will be deemed to be a member of the State and Subordinate Service to which he would have belonged but for the deputation for the purpose of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and the Government Servants Conduct Rules, notwithstanding that his services are placed at the disposal of the foreign employer. If the Officer, before his deputation to the foreign employer, committed any act or omission which renders him to liable to any penalty specified in the said Rules, the State Government or the appropriate disciplinary authority under whom he was serving at the time of commission of such act or omission shall alone be competent to institute disciplinary proceedings against him and to impose on him a penalty specified in the said Rules. As per the said provisions, the State Government or the appropriate disciplinary authority has not been barred from taking disciplinary action against deputationist.

8. The above said Government Order makes it clear that the deputationist is deemed to be a member of the State and subordinate service to which he belongs notwithstanding that his services are placed at the disposal of foreign employer. In our case, the Disciplinary Authority, viz., Deputy Registrar, Omalur, who was his immediate superior officer at the time of commitment of certain lapses and also the Appointing authority in respect of the petitioner, has taken the disciplinary action under Rule 17(b) of the Rules. As per Rule 8 of the Rules, the second respondent is the competent disciplinary authority with delegation of power, to impose the major punishment. The second respondent is an authority higher than the rank of the Deputy Registrar of Co.operative Societies, who has initiated the disciplinary case against the petitioner. On a perusal of all these materials and the Rules, we are satisfied that the second respondent is the competent authority to dismiss the petitioner and the action of the second respondent is in conformity with the provisions contained in G.O.Ms.No.111 Personnel and Administrative Reforms Department dated 02.05.1994; hence, the first contention of the learned counsel for the petitioner is liable to be rejected.

8. Regarding the second contention relating to violation of principles of natural justice, the details furnished in the counter affidavit show that the charge memo was served on the petitioner on 19.11.1998. In the charge memo itself it was specifically mentioned that 15 days time was given for submission of his explanation and if the explanation was not received, it

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will be presumed that he has no explanation to offer and further action will be taken on merits of the case. The Deputy Registrar, Omalur, in his letters dated 18.12.1998 and 08.01.1999, has instructed the petitioner to submit his explanation. On 15.02.1999, he gave a final chance to the petitioner for submission of his explanation. The fact remains, the petitioner had neither submitted his explanation, nor sought for perusal of records in respect of the charges leveled against him. In these circumstances, the Deputy Registrar, Omalur requested the second respondent / Joint Registrar of Co.operative Societies, Salem to appoint a Domestic Enquiry Officer with regard to the disciplinary action taken against the petitioner.

9. The particulars further show that the Domestic Enquiry Officer issued summons to the petitioner for appearance and requested him to be present for domestic enquiry on 29.11.1999. The petitioner appeared on 29.11.1999 and sought for adjournment for perusal of the records. The petitioner perused the records relating to the allegations, in the presence of the Domestic Enquiry Officer in the Office of the Deputy Registrar of Cooperative Societies, Omalur. Finally, the petitioner appeared on 13.07.2000 and submitted his written explanation before the Enquiry Officer. He also deposed before him that he had no witness to be examined. The Domestic Enquiry Officer completed the enquiry and submitted his report to the second respondent on 01.11.2001. The second respondent communicated the Domestic Enquiry Officer's report to the petitioner on 05.011.2001, requiring him to submit further representation if any, which was received by the petitioner on 07.11.2001. The petitioner has submitted his further representation on 05.12.2001. The second respondent examined the enquiry report, considered the explanation submitted and passed the final order, based on the findings of the Enquiry Officer. In such circumstances, it cannot be claimed that the petitioner was not given adequate opportunity in the enquiry proceedings.

10. Coming to the claim that he was not given adequate opportunity before the Tribunal, the perusal of the impugned order of the Tribunal shows that after filing of reply affidavit by the Department, the petitioner also filed an additional affidavit on 12.02.2003. The Tribunal, after considering all the materials, passed an order on 22.05.2003, dismissing his application. The grievance of the petitioner is that the Tribunal reserved the Original Application for orders and the order came to be passed after a period of one month, and in the meanwhile, the Department filed a reply statement. All these facts cannot be considered by this Court at this juncture. If the petitioner really had such grievance, on seeing the order, he could have approached the Tribunal by filing a petition for review of the said order.

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Hence, the said contention is also liable to be rejected. Accordingly, we hold that before the Enquiry Officer and the Tribunal, the petitioner was given ample opportunity to put forth his case.

11. Coming to the other contention, it is seen that the Deputy Registrar of Co.operative Societies is the competent authority in respect of Senior Inspector to issue the charge memo and as per Rule 14(a)(2), the second respondent / Joint Registrar is the competent authority to impose punishments like dismissal, reduction in rank, removal, etc., under Rule 8 against the Senior Inspector of Co.operative Societies. As a matter of fact, this information is also found in the dismissal order itself. We are satisfied that the second respondent has acted only based on the relevant Rules and there is no substance in the allegation made by the petitioner.

12. Coming to the question of discrimination, viz., others who are said to have been involved in similar charges were awarded lesser punishment and only in the case of the petitioner, punishment of dismissal was imposed. First of all, except the general statement, the petitioner has not furnished necessary details of the persons concerned, their involvement and the ultimate punishment imposed on them. Secondly, when the petitioner was holding additional charge of Special Officer for 14 Co.operative Societies, he had made 13 irregular appointments, 43 irregular promotions, ordered 53 irregular pay revisions and also was responsible for issuing 10 irregular loans. In this way, he has caused heavy loss to the tune of Rs.7,65,855/- to 14 Co.operative Societies. Further, out of 55 charges, 46 were proved and 9 alone were not proved in the domestic enquiry.

13. We have already referred to the fact that the petitioner was given adequate opportunity before the Enquiry Officer. It is also not in dispute that in respect of loss caused to the Societies, surcharge proceedings had been initiated and he was asked to pay the loss caused to the Societies. It is also stated that against the said order, the petitioner preferred an appeal before the competent forum and the same is pending. We are also satisfied that the second respondent after taking into consideration the representation of the petitioner on the report of the Domestic Enquiry Officer, connected records, the gravity of proved charges, and consequential loss caused to the Societies, has come to the conclusion to dismiss the petitioner from service. All these aspects have also been considered by the Tribunal and while dismissing the Original Application filed by the petitioner, the Tribunal concluded that since the charges are grave in nature, and the applicant therein / petitioner herein acted in a highhanded manner, as well as he has caused loss amounting to

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nearly Rs.7.5 lakhs to the Societies, for which he was the Special Officer, the punishment of dismissal imposed on him is just and adequate to the proved charges. In the light of the abundant materials, we are in agreement with the said conclusion arrived at by the Tribunal and do not find any valid reason or justification to interfere with the impugned order of the Tribunal.

In the light of what is stated above, the writ petition fails and the same is dismissed. No costs.

kh

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Registrar of Co.operative
   Societies,
   N.V.N. Maaligai,
   No.170 E.V.R. Periyar Road
   Kilpauk, Chennai 600 10.

2. The Joint Registrar of Co.operative
   Societies, Ramakrishna Road,
   Salem 7.

3. The Registrar
   Tamil Nadu Administrative Tribunal
   City Civil Court Buildings
   Chennai.

1 cc To Mr.L.Chandrakumar, Advocate SR.47808.

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P.D. Order in
W.P.No.19840 of 2003

RA(CO)
RVL 13.12.2005

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